

# SENATE RECORD VOTE ANALYSIS

106th Congress  
1st Session

Vote No. 280

September 21, 1999, 5:43 p.m.  
Page S-11096 Temp. Record

## BANKRUPTCY REFORM/Cloture

**SUBJECT:** Bankruptcy Reform Act of 1999 . . . S. 625. Lott motion to close debate.

### ACTION: CLOTURE MOTION REJECTED, 53-45

**SYNOPSIS:** As reported, S. 625, the Bankruptcy Reform Act of 1999, will enact numerous reforms in the bankruptcy system to protect creditors, debtors, and American consumers. The bill has many similarities to the bankruptcy conference report from last year but includes a more flexible means test, additional consumer protections, and stronger child support protections. (Last year's conference report passed the House of Representatives, but was defeated by a Senate filibuster (see 105th Congress, 2nd Session, Vote No. 313)). S. 625 will allow a bankruptcy judge to dismiss a Chapter 7 case if the system is being "abused" (not "substantially abused" as under current law), or, alternatively, to convert it into a Chapter 13 case if the system is being abused and if the petitioner consents. (In Chapter 7, the debtor surrenders those assets which do not qualify for an exemption under the law, and the assets are sold to satisfy, in part, the demand of the creditors. Any debt that remains after the sale of the assets is discharged. Chapter 13 provides for the creation of a repayment plan to repay a portion of the bankrupt's debts using future earnings. Under Chapter 13, creditors look to the future earnings of the debtor for repayment rather than to the property he currently owns. When the debtor has made his payments as required under the repayment plan, any unpaid portion of his debt is discharged.) Other provisions include the following: creditors will be prohibited from filing a motion to dismiss or convert to Chapter 13 if the filer's income is below the national or state median; penalties will be imposed on bankruptcy attorneys who steer individuals with repayment capacity into Chapter 7; rights for child support payments will be protected by requiring bankruptcy trustees to notify child support creditors of their right to use State child support enforcement agencies to collect outstanding amounts due and by permitting general creditors to disclose to child support claimants the last known billing address of a bankrupt who owes child support or alimony; creditors will be required to negotiate in good faith with debtors before the declaration of bankruptcy; Chapter 11 proceedings will be sped up for small business debtors; recommendations of the United Nations Commission on International Trade Law regarding transitional bankruptcies will be enacted; and the treatment of tax claims in bankruptcy will be clarified. The

(See other side)

YEAS (53)		NAYS (45)		NOT VOTING (1)	
Republicans (53 or 100%)	Democrats (0 or 0%)	Republicans (0 or 0%)	Democrats (45 or 100%)	Republicans (1)	Democrats (0)
Abraham	Hutchinson	Akaka	Kennedy	McCain <sup>-2</sup>	
Allard	Hutchison	Baucus	Kerrey		
Ashcroft	Inhofe	Bayh	Kerry	<b>VOTING PRESENT (1)</b> Fitzgerald <b>EXPLANATION OF ABSENCE:</b> 1—Official Business 2—Necessarily Absent 3—Illness 4—Other  <b>SYMBOLS:</b> AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	
Bennett	Jeffords	Biden	Kohl		
Bond	Kyl	Bingaman	Landrieu		
Brownback	Lott	Boxer	Lautenberg		
Bunning	Lugar	Breaux	Leahy		
Burns	Mack	Bryan	Levin		
Campbell	McConnell	Byrd	Lieberman		
Chafee	Murkowski	Cleland	Lincoln		
Cochran	Nickles	Conrad	Mikulski		
Collins	Roberts	Daschle	Moynihan		
Coverdell	Roth	Dodd	Murray		
Craig	Santorum	Dorgan	Reed		
Crapo	Sessions	Durbin	Reid		
DeWine	Shelby	Edwards	Robb		
Domenici	Smith, Bob (I)	Feingold	Rockefeller		
Enzi	Smith, Gordon	Feinstein	Sarbanes		
Frist	Snowe	Graham	Schumer		
Gorton	Specter	Harkin	Torricelli		
Gramm	Stevens	Hollings	Wellstone		
Grams	Thomas	Inouye	Wyden		
Grassley	Thompson	Johnson			
Gregg	Thurmond				
Hagel	Voinovich				
Hatch	Warner				
Helms					

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

Department of Justice (DoJ) estimates that creditors lose \$3.22 billion every year to a bankruptcy system that allows individuals who could repay their debts to file for bankruptcy, and those costs are then passed along to all Americans in the form of higher prices and higher interest rates. The Congressional Budget Office (CBO) estimates that bankruptcies cost each American household approximately \$400 per year in higher costs for goods, services, and credit.

On September 16, 1999, Senator Lott moved to close debate on the bill.

NOTE: A three-fifths majority (60) vote is required to invoke cloture.

**Those favoring** the motion to invoke cloture contended:

This bill has broad, bipartisan support. The House passed it overwhelmingly, and the Senate Judiciary Committee voted for it on a bipartisan basis as well. It is a good piece of legislation that will make long overdue improvements to the current bankruptcy system. The present problem is that many of our Democrat colleagues desire to offer numerous non-relevant amendments for political purposes, concerning such topics as the minimum wage, guns, abortion, tobacco, agriculture, international affairs, and economics. They and we are well aware that following their controversial agenda would result in a filibuster by amendment. It would take weeks or months of time we do not have left in this session to consider all of the issues they say they want to debate. They clearly are not interested in passing this bill with those issues attached; they are just looking for an opportunity to grandstand. Following the Democrats' agenda would result in weeks of political speeches and the death, again, of this bipartisan bill. Certainly there are some Democrats who favor killing this bill. Last year it was defeated at the end of the session by a filibuster. This year, the idea seems to be to kill it with extraneous amendments.

The bill, on its merits, clearly should be enacted. First, it will demand personal responsibility from those people who declare bankruptcy. It will establish a means test that will determine whether a bankrupt has the ability to repay at least a portion of his or her debt. Survey after survey confirms that most Americans believe bankruptcy ought to be based on need and that debtors should repay as much as possible. Currently, bankruptcy is disreputably used by many people to escape debts that they could repay. In 1998, personal bankruptcies in this country cost the average, non-filing family \$400 due to higher interest costs and higher costs for goods and services that businesses incurred from bankrupts and passed on to consumers. Each year the problem has been getting worse. Despite the prosperity of this decade, there has been a 94.7 percent increase in personal bankruptcies since 1990. During the same timeframe business bankruptcies have fallen by 31 percent. The American people want accountability--they are tired of picking up the tab for deadbeats. Our bill, as it stands, will eliminate loopholes that are frequently used by those people who utilize bankruptcy as a financial planning tool rather than as a last resort.

Second, this bill will provide new protections for those people who enter the bankruptcy system legitimately and necessarily and who are subjected to abuse by creditors. For instance, it will require creditors to negotiate in good faith with debtors before the declaration of bankruptcy, and it will force creditors who come to negotiated agreements with bankrupts to be sure that payments that are made are credited under the Chapter 13 filing. Another important new protection will be the creation of a confidential education pilot program for debtors regarding credit managing and counseling.

Third, our bill contains provisions designed especially to protect America's children. In our bill, deadbeat dads will not be able to avoid child support or alimony payments by filing bankruptcy, because these domestic debts will be moved from seventh on the priority list to first, in front of attorneys fees and other special interests. The bill also will exempt from discharge financial obligations that one ex-spouse owes to another.

Fourth, there is the issue of family farmers. Because we are attempting to block recrementitious amendments on this bill, our colleagues across the way would have the American public believe that we Republicans do not care about this country's farmers. That could not be farther from the truth. The current bill will reinstate and make permanent Chapter 12 in the bankruptcy system. That chapter is designed specifically to meet farmers' needs. In fact, if this bill is not passed by the end of this month, farmers who would otherwise file for bankruptcy under Chapter 12 will be forced to file under Chapter 11, which is designed for corporate America. Title X of S. 625 will improve Chapter 12 in two major ways. First, the definition of a family farmer will be widened so more farmers can qualify for Chapter 12 bankruptcy protection. Second, it will reduce the priority of capital gains tax liabilities for farm assets sold as a part of a reorganization plan. This provision will allow farmers to sell assets to generate cash-flow when liquidity is essential to maintaining a farming operation, after required negotiations with banks on new reorganization plans. Whether Democrats kill this bill by filibuster or by offering a string of political amendments, they will be killing these needed reforms for farmers. They, not Republicans, will be leaving family farmers exposed to forced auctions and foreclosures.

We do not want this bill to become a Christmas tree of amendments from colleagues who want to address every issue possible, including minimum wage, guns, abortion, tobacco, agriculture, international affairs, and economics. Their desire to offer those amendments has less to do with a desire to improve the lives of everyday Americans and more to do with a desire to play political games. We want to pass this bill, but our Democrat colleagues refuse to let us. They say they will oppose any effort to close debate unless they are allowed the right to offer an endless series of political, controversial amendments, which in the end will just as effectively kill the bill. Democrats do not want to be forced to vote up or down on bankruptcy reform, so they will continually offer

SEPTEMBER 21, 1999

VOTE NO. 280

---

amendments and block cloture (in other words, filibuster) in order to avoid accountability. We need legislation this year that provides much-needed, meaningful, and fair bankruptcy reform. We know a large number of our Democratic colleagues agree with us on the merits of this bill. We urge them not to sacrifice this bill to their party's politics. If only a few of our Democratic colleagues who support this bill have the courage to vote their beliefs instead of the party line, we will get cloture. We urge our Democratic colleagues who support this bill to show that courage.

**Those opposing** the motion to invoke cloture contended:

Republicans are using cloture as a strong-arm tactic to stifle adequate debate on and amendments to this bill. We cannot give in to that tactic. This bill has many severe problems that must be fixed before we can consider limiting debate. We are particularly worried about this bill's nearly exclusive focus on the need to stop abusive bankruptcy filings. We share that concern, but we are also concerned with protecting people who are unfairly pushed into bankruptcy and are abused by disreputable creditors and banks when they have legitimate needs to file for Chapter 7 or Chapter 13 protections. Senators on the other side of the aisle preach about personal responsibility, but what about the responsibility of creditors, banks, and credit card companies? Should not they be held responsible for the increasing personal debt in this country? We have businesses that make "pay day" loans with an interest rate of 391 percent, banks with checking accounts that require minimum balances or high fees that are impossible for the poor of this country to meet, and credit card companies that market to children and attempt to trap them in debt.

We also oppose cloture because we want to use this bill to address several very important issues which our Republican colleagues have been avoiding. Republicans have done a very good job of keeping off of the Senate floor those bills to which extraneous amendments could be attached; this bill is the first exception in a long time, and we cannot allow it to pass or we may not get another chance. One of the issues we want to address is farm program reforms. We want to offer amendments that would bring farm prices up. Unfortunately, our Republican colleagues would rather file cloture than let us help America's farmers. We also would like to increase competition in the food industry by putting a moratorium on mergers and acquisitions, but, again, Republicans do not want us to even bring that idea to the floor for discussion. Yet another extremely important issue that should be addressed on this bill is the minimum wage. We must examine the current state of all our poorer citizenry and welfare families and offer them the chance to succeed by increasing their wages by \$1 and, thereby, providing fewer needs for bankruptcies. We have important amendments we want to offer to improve the lives of our citizens, so we urge our colleagues to vote against cloture.